

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re the application of:	)	
	)	Before the Examiner
Schleppenbach, et al.	)	
	)	Benjamin J. Smith
Serial No. 10/579,644	)	
	)	Art Unit 2176
Filing Date: May 18, 2006	)	
	)	Date: July 22, 2010
<b>CONTENT COMMUNICATION</b>	)	
<b>SYSTEM AND METHODS</b>	)	

MAIL STOP Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**APPELLANTS' BRIEF**

Sir:

This brief follows the Notice of Appeal filed May 24, 2010 in the above-captioned case and supports an appeal of the Examiner's rejection of claims in the Office Action dated February 23, 2010.

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**I. Real Party in Interest**

The real party in interest is the Assignee: gh LLC.

**II. Related Appeals and Interferences**

Appellants, Appellants' legal representative, and Assignee know of no other prior or pending appeals, interferences or judicial proceedings that may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**III. Status of Claims**

Pending: Claims 1-9, 27, 30-45 and 47-51

Canceled: 10-26, 28-29 and 46

Allowed: None

Rejected: Claims 1-9, 27, 30-45 and 47-51

Withdrawn: None

Appealed: Claims 1-9, 27, 30-45 and 47-51

**IV. Status of Amendments**

An amendment submitted on November 18, 2009 prior to the issuance of final rejection of Claims 1-9, 27, 30-45 and 47-51 was entered by the Examiner. No further amendments have been submitted.

**V. Summary of Claimed Subject Matter**

The following explanation of the subject matter defined in each of the independent claims at issue in this appeal is provided with reference to page and line numbers in the specification and to reference characters in the drawings in compliance with 37 C.F.R. §41.37(c)(v). These references are made to exemplary embodiments disclosed in the application in an effort to enable the Board to more quickly determine where the claimed subject matter is described in the application, and do not limit the scope of the claims.

**A. Independent Claim 1**

The subject matter defined in independent claim 1 relates to a method of communicating content, including converting inputted content 172, 173 (FIG. 2A) into an XML format to form converted content, applying a DOM tree to the content, outputting the converted content 174 into a plurality of output devices, and coordinating the plurality of output devices so that the plurality of the output devices delivers synchronized output (page 3, lines 8-11, and page 10, line 30 through page 11, line 12 of the present specification).

**B. Independent Claim 27**

The subject matter defined in independent claim 27 relates to a method of communicating content to a special needs person, including accepting content input, using a processor to convert the content input into a converted content, providing a computerized output configuration toolbar 193, 195 (FIGS. 14-15) to the special needs person, and modifying output to the special needs person based upon a selected configuration, wherein the toolbar is configured to modify an existing third-party software application (page 13, line 6 through page 13, line 18 of the present specification).

**C. Independent Claim 31**

The subject matter defined in independent claim 31 relates to a method of communicating content to a special needs person, including accepting content input, using a processor to convert the content input into a converted content, providing a computerized output configuration toolbar 193, 195 (FIGS. 14-15) to the special needs person, modifying output to the special needs person based upon a selected configuration, and providing a computerized avatar 184 (FIG. 10) to facilitate communicating of the content, wherein the output is synchronized for multiple simultaneous outputs (page 10, line 30 through page 11, line 12 of the present specification).

**D. Independent Claim 32**

The subject matter defined in independent claim 32 relates to a method of communicating content to a special needs person, including accepting content input, using a processor to convert the content input into a converted content, providing a computerized output configuration toolbar 193, 195 (FIGS. 14-15) to the special needs person, wherein the toolbar is configured to change a reading rate 199 at which speech is generated, modifying output to the special needs person based upon a selected configuration, loading a test onto a portable system 180 (FIG. 20), providing a plurality of communication channels on the portable system by which the special needs person may interact with the portable system, the channels including a Braille keyboard (page 7, line 31 through page 8, line 3 of the present specification) and/or a sip-and-puff device (page 5, line 30), and recording responses from the special needs person communicated via at least one of the channels (page 10, lines 16-21 and page 10, line 30 through page 11, line 12).



**VI. Grounds of Rejection to be Reviewed on Appeal****A. Claims 1, 2, 4, 5 and 51**

Claims 1, 2, 4 and 5 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,912,529 (Kolfman) in view of U.S. Patent No. 6,725,424 (Schwerdtfeger).

**B. Claim 3**

Claim 3 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman and Schwerdtfeger in view of U.S. Patent Pub. No. 2005/0021859 (Willian).

**C. Claim 6**

Claim 6 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman and Schwerdtfeger in view of U.S. Patent No. 6,925,595 (Whitledge).

**D. Claims 7-9**

Claims 7-9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman and Schwerdtfeger in view of U.S. Patent No. 7,065,483 (Decary).

**E. Claim 43**

Claim 43 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman, Schwerdtfeger and Decary in view of U.S. Patent Pub. No. 2002/0178007 (Slotznick).

**F. Claims 44-45**

Claims 44-45 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman, Schwerdtfeger and Decary in view of U.S. Patent No. 4,470,821 (LeCapelain).

**G. Claims 27, 30 and 34**

Claims 27, 30 and 34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman in view of U.S. Patent No. 5,850,629 (Holm).

**H. Claim 33**

Claim 33 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman and Holm in view of U.S. Patent No. 7,333,507 (Bravin).

**I. Claim 35**

Claim 35 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman and Holm in view of Willian.

**J. Claims 41-42**

Claims 41-42 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman, Holm and Willian in view of Schwerdtfeger.

**K. Claims 36-40**

Claims 36-40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman, Holm and Willian in view of U.S. Patent Pub. No. 2003/0152904 (Doty).

**L. Claim 31**

Claim 31 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Schwerdtfeger in view of Bravin.

**M. Claims 32 and 50**

Claims 32 and 50 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Holm, Schwerdtfeger and Willian.

**N. Claims 47-49**

Claims 47-49 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Holm, Schwerdtfeger and Willian in view of Doty.

## **VII. Argument**

### **A. Rejection of Claims 1, 2, 4, 5 and 51 under 35 U.S.C. §103(a)**

Claims 1, 2, 4, 5 and 51 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,912,529 (Kolfman) in view of U.S. Patent No. 6,725,424 (Schwerdtfeger)

Claim 1 recites in part “outputting the converted content into a plurality of output devices; and coordinating the plurality of output devices so that the plurality of the output devices delivers synchronized output.” (Emphasis added). Appellants submit that the subject matter of claim 1 is not disclosed or suggested by the cited references, alone or in combination, and includes distinct advantages thereover.

The Examiner cites Schwerdtfeger as disclosing screen readers that synchronize video and sound. However, claim 1 refers to output being synchronized between multiple output devices rather than within a single output device. That is, Schwerdtfeger does not disclose coordinating output devices such that their outputs are synchronized with each other. Such is clearly the meaning of “synchronized” as the term is used at page 10, line 30 through page 11, line 12 of the present specification. Thus, the cited references do not disclose or suggest outputting the converted content into a plurality of output devices, and coordinating the plurality of output devices so that the plurality of the output devices delivers synchronized output, as recited by claim 1.

In view of the remarks above, Appellants respectfully submit that claim 1, and claims 2 and 4-5 depending therefrom, are in condition for allowance and respectfully request the Honorable Board of Appeals to reverse the Examiner’s rejection of claims 1-2 and 4-5 from the Office Action.

### **B. Rejection of Claim 3 under 35 U.S.C. §103(a)**

Claim 3 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman and Schwerdtfeger in view of U.S. Patent Pub. No. 2005/0021859 (Willian).

Appellants point out that claim 3 depends from claim 1, which is in condition for allowance for all of the reasons given above. Accordingly, claim 3 is also in condition for allowance.

### **C. Rejection of Claim 6 under 35 U.S.C. §103(a)**

Claim 6 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman and Schwerdtfeger in view of U.S. Patent No. 6,925,595 (Whitledge).

Appellants point out that claim 6 depends from claim 5, which is in condition for allowance for all of the reasons given above. Accordingly, claim 6 is also in condition for allowance.

**D. Rejection of Claims 7-9 under 35 U.S.C. §103(a)**

Claims 7-9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman and Schwerdtfeger in view of U.S. Patent No. 7,065,483 (Decary).

Appellants point out that claims 7-9 depend from claim 1, which is in condition for allowance for all of the reasons given above. Accordingly, claims 7-9 are also in condition for allowance.

**E. Rejection of Claim 43 under 35 U.S.C. §103(a)**

Claim 43 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman, Schwerdtfeger and Decary in view of U.S. Patent Pub. No. 2002/0178007 (Slotznick).

Appellants point out that claim 43 depends from claim 7, which is in condition for allowance for all of the reasons given above. Accordingly, claim 43 is also in condition for allowance.

**F. Rejection of Claims 44-45 under 35 U.S.C. §103(a)**

Claims 44-45 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman, Schwerdtfeger and Decary in view of U.S. Patent No. 4,470,821 (LeCapelain).

Appellants point out that claims 44-45 depends from claim 7, which is in condition for allowance for all of the reasons given above. Accordingly, claims 44-45 are also in condition for allowance.

**G. Rejection of Claims 27, 30 and 34 under 35 U.S.C. §103(a)**

Claims 27, 30 and 34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman in view of U.S. Patent No. 5,850,629 (Holm).

Claim 27 recites in part “providing a computerized output configuration toolbar to the special needs person; and modifying output to the special needs person based upon a selected configuration, wherein the toolbar is configured to modify an existing third-party software application.” (Emphasis added). Appellants submit that the subject matter of claim 27 is not disclosed or suggested by the cited references, alone or in combination, and includes distinct advantages thereover.

The Examiner cites Holms as disclosing “enabling the person to use the toolbar to modify an existing third-party software application.” However, control panel 38 of Holms is not a toolbar. A toolbar may be defined as “a row of icons on a computer screen that activate commands or functions when clicked.” The American Heritage® Dictionary of the English Language, Fourth Edition (Exhibit A). Control panel 38 is not a row of icons and thus is not a toolbar. The conventional toolbar of EXCEL or WORDPERFECT cited by the Examiner is not an “output configuration toolbar . . . configured to modify an existing third-party software application”, as required by claim 27. Thus, the cited references do not disclose or suggest “providing a computerized output configuration toolbar to a special needs person, and modifying output to the special needs person based upon a selected configuration, wherein the toolbar is configured to modify an existing third-party software application”, as recited by claim 27.

For the above reasons, Appellants respectfully submit that claim 27 and claims 30 and 34 depending therefrom, are in condition for allowance.

**H. Rejection of Claim 33 under 35 U.S.C. §103(a)**

Claim 33 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman and Holm in view of U.S. Patent No. 7,333,507 (Bravin).

Appellants point out that claim 33 depends from claim 27, which is in condition for allowance for all of the reasons given above. Accordingly, claim 33 is also in condition for allowance.

**I. Rejection of Claim 35 under 35 U.S.C. §103(a)**

Claim 35 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman and Holm in view of Willian.

Appellants point out that claim 35 depends from claim 27, which is in condition for allowance for all of the reasons given above. Accordingly, claim 35 is also in condition for allowance.

**J. Rejection of Claims 41-42 under 35 U.S.C. §103(a)**

Claims 41-42 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman, Holm and Willian in view of Schwerdtfeger.

Claim 41 recites in part that “the providing of channels step includes permitting access to at least one of an access group comprising a Braille keyboard and a sip-and-puff device.” (Emphasis Added). The Examiner cites Schwerdtfeger as disclosing a Braille display. However, a display is not a keyboard by which an individual can provide responses. Rather, an individual can only receive information via a display. Accordingly, claim 41 is in condition for allowance.

Appellants point out that claim 42 depends from claim 35, which is in condition for allowance for all of the reasons given above. Accordingly, claim 42 is also in condition for allowance.

**K. Rejection of Claims 36-40 under 35 U.S.C. §103(a)**

Claims 36-40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kolfman, Holm and Willian in view of U.S. Patent Pub. No. 2003/0152904 (Doty).

**1. Claims 36-40 are patentable**

Responsive to the rejection of claims 36-40 under 35 U.S.C. 103(a) as being unpatentable over Kolfman and Schwerdtfeger and Willian in view of US Patent Publication No. 2003/0152904 (Doty), Appellants point out that claims 36-40 depend from claim 35, which is in condition for allowance for all of the reasons given above. Accordingly, claims 36-40 are also in condition for allowance.

**2. Claim 37 is separately patentable**

In addition to depending from allowable claim 35, Appellants submit that claim 37 is separately patentable. Claim 37 recites in part “using the processor to prevent the person from returning to a portion of the test”. Appellants submit that the cited references are completely silent as to this subject matter of claim 37. Accordingly, claim 37 is in condition for allowance.

**L. Rejection of Claim 31 under 35 U.S.C. §103(a)**

Claim 31 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Schwerdtfeger in view of Bravin.

Claim 31 recites in part that “the output is synchronized for multiple simultaneous outputs.” (Emphasis added). Thus, claim 31 recites subject matter that is substantially similar to the subject matter of claim 1, which is in condition for allowance for the reasons given above. Accordingly, claim 31 is also in condition for allowance.

**M. Rejection of Claims 32 and 50 under 35 U.S.C. §103(a)**

Claims 32 and 50 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Holm, Schwerdtfeger and Willian.

**1. Claim 32 is patentable**

Claim 32 recites in part “providing a plurality of communication channels on the portable system by which the special needs person may interact with the portable system, the channels including at least one of a Braille keyboard and a sip-and-puff device; and recording responses from said special needs person communicated via at least one of said channels. (Emphasis added). Thus, claim 32 recites subject matter substantially similar to the subject matter of claim 41, which is in condition for allowance for the reason given above. Accordingly, claim 32 is also in condition for allowance.

**2. Claim 50 is patentable**

Claim 50 recites “permitting access to a sip-and-puff device.” (Emphasis added). Thus, claim 50 recites subject matter substantially similar to the subject matter of claim 41, which is in condition for allowance for the reason given above. Accordingly, claim 50 is also in condition for allowance.

**N. Rejection of Claims 47-49 under 35 U.S.C. §103(a)**

Claims 47-49 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Holm, Schwerdtfeger and Willian in view of Doty.

Responsive to the rejection of claims 47-49 under 35 U.S.C. 103(a) as being unpatentable over Kolfman, Schwerdtfeger and Willian in view of Doty, Appellants point out that claims 47-49 depend from claim 32, which is in condition for allowance for all of the reasons given above. Accordingly, claims 47-49 are also in condition for allowance.

**O. Objection to Claim 50 under 37 CFR 1.75(c)**

At page 2 of the Final Office Action, the Examiner objected to claim 50 for failing to further limit the subject matter of a previous claim. Claim 32 recites “the channels including at least one of a Braille keyboard and a sip-and-puff device.” Appellants submit that this language means that the channels may include a Braille keyboard alone, both a Braille keyboard and a sip-and-puff device, or a sip-and-puff device alone. The Examiner states “using the broadest reasonable interpretation, if the device chosen in Claim 32 is the “sip-and-puff device” then Claim 50 fails to further limit Claim 32. Appellants respectfully submit, however, that picking one of a number of possibilities (i.e., the sip-and-puff device alone) is not the broadest reasonable interpretation as contended by the Examiner, but rather is a very narrow interpretation.

Appellants submit that by positively stating that access to a sip-and-puff device is permitted, the possibility that the channels include only a Braille keyboard is eliminated, and thus claim 50 does further limit the subject matter of Claim 32. Accordingly, claim 50 is in allowable form.

Respectfully submitted,

July 22, 2010

Date

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### **VIII. Claims Appendix**

#### List of Claims Involved in the Appeal

1. A method of communicating content, said method comprising the steps, of:  
converting inputted content into an XML format to form converted content;  
applying a DOM tree to the content;  
outputting the converted content into a plurality of output devices; and  
coordinating the plurality of output devices so that the plurality of the output devices delivers synchronized output.
2. The method of claim 1, wherein at least one of said output ~~device~~ devices is configured for use by a special needs person.
3. The method of claim 1, wherein at least one of said output ~~device~~ devices is a test device usable for administering standardized tests.
4. The method of claim 1, further comprising a step of reading the DOM tree from data embedded in the inputted content.
5. The method of claim 1, further comprising a step of scanning the inputted content to develop the DOM tree.

6. The method of claim 5, wherein said scanning step includes a step of headings scanning in order to identify at least one of headings, subheadings, and chapters.

7. The method of claim 1, further comprising a step of parsing the inputted content into at least content pieces, the content pieces having a characteristic selected from a characteristic group comprising a paragraph a phrase, a word, and a letter.

8. The method of claim 7, further comprising a step of analyzing the content pieces so as to assign an identifier to each of said content pieces.

9. The method of claim 8, wherein the identifier is at least one selected from an identifier group comprising a subject, a predicate, and an object.

27. A method of communicating content to a special needs person, said method comprising the steps of:

accepting content input;

using a processor to convert said content input into a converted content,

providing a computerized output configuration toolbar to the special needs person; and

modifying output to the special needs person based upon a selected configuration,

wherein the toolbar is configured to modify an existing third-party software application.

30. The method of claim 27, wherein the special needs person can modify voice selection.

31. A method of communicating content to a special needs person, said method comprising the steps of:

accepting content input;

using a processor to convert said content input into a converted content;

providing a computerized output configuration toolbar to the special needs person;

modifying output to the special needs person based upon a selected configuration; and

providing a computerized avatar to facilitate communicating of the content, wherein the output is synchronized for multiple simultaneous outputs.

32. A method of communicating content to a special needs person, said method comprising the steps of:

accepting content input;

using a processor to convert said content input into a converted content;

providing a computerized output configuration toolbar to the special needs person,

wherein the toolbar is configured to change a reading rate at which speech is generated;

modifying output to the special needs person based upon a selected configuration;

loading a test onto a portable system;

providing a plurality of communication channels on the portable system by which the special needs person may interact with the portable system, the channels including at least one of a Braille keyboard and a sip-and-puff device; and

recording responses from said special needs person communicated via at least one of said channels.

33. The method of claim 27, comprising the further step of providing a computerized avatar to facilitate communicating of the content.

34. The method of claim 27, comprising the further step of enabling the special needs person to use the toolbar to change a reading rate at which speech is generated.

35. The method of claim 27, comprising the further steps of:

loading a test onto a portable system;

providing a plurality of communication channels on the portable system by which the person may interact with the portable system; and

recording responses from said individual communicated via at least one of said channels.

36. The method of claim 35, comprising the further step of using the processor to time portions of the test.

37. The method of claim 35, comprising the further step of using the processor to prevent the person from returning to a portion of the test.

38. The method of claim 35, comprising the further step of using the processor to enable a proctor to add additional time for taking the test.

39. The method of claim 35, comprising the further step of using the processor to enable a proctor to cancel a portion of the test.

40. The method of claim 35, further comprising the step of delivering the portable system to a site at which testing content may be used.

41. The method of claim 35, wherein the providing of channels step includes permitting access to at least one of an access group comprising a Braille keyboard and a sip-and-puff device.

42. The method of claim 35, further comprising a step of converting the testing content to XML format.

43. The method of claim 7, further comprising a step of highlighting individual words.

44. The method of claim 7, further comprising a step of color coding at least one of passages and words.

45. The method of claim 9, further comprising a step of color coding at least one of a subject, a predicate, and an object of a sentence.

47. The method of claim 32, comprising the further step of using the processor to time portions of the test.

48. The method of claim 32, comprising the further step of using the processor to prevent the person from returning to a portion of the test.

49. The method of claim 32, comprising the further step of using the processor to enable a proctor to add additional time for taking the test.

50. The method of claim 32, wherein the providing of channels step includes permitting access to a sip-and-puff device.

51. The method of claim 1, wherein the plurality of the output devices delivers output synchronized for multiple simultaneous outputs.

**IX. Evidence Appendix**

No evidence has been entered.



**X. Related Proceedings Appendix**

Appellants are unaware of any Related Proceedings.

1272207.1

Dictionary

Thesaurus

Encyclopedia

Translator

Web

Login

Register

Help



tool bar

Search

# Exhibit A

## Related Searches

Toolbar

Msn toolbar

Google toolbar

Menu bar

Windows toolbar

Toolbar skins

Teoma toolbar

Yahoo toolbar

Aol toolbar

Title bar

Internet explorer t...

Standard toolbar

## Nearby Words

tool-and-die work

tool-post



tool-rest

**toolbar**

toolbook

toolbox

toolboxes

**tool-bar** (tōō'bar)  

n. A row of icons on a computer screen that activate commands or functions when clicked.

**Main Entry:** toolbar

**Part of Speech:** n

**Definition:** a row or strip of clickable icons or buttons on a Web browser or other software application that activates frequently needed functions

**Etymology:** 1989

## Computing Dictionary

### toolbar operating system

A common graphical user interface component, consisting of a permanently visible row of button icons that, when clicked with the mouse, cause the program to perform some action such as printing the current document or changing the mode of operation.

The toolbar buttons often invoke functions accessible via menus but they are easier to use since they are permanently visible. A typical use would be in a paint program where the toolbar allows the users to select one of the various painting "tools" - brush, pencil, bucket etc.

Some application programs under some operating systems may allow the user to customise the functions accessible via toolbars; in others, the choice is fixed by the programmer.

(2003-10-24)

» collate

» abecedarian

» anaphora

» balletist



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